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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

ESTATE OF THOMAS S. DONNELLY, SR., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the district court (Appendix A, *infra*, pp. 13–20) is not officially reported. The court of appeals affirmed without opinion (Appendix B, *infra*, p. 21).

JURISDICTION

The judgment of the court of appeals (Appendix B, *infra*, p. 21) was entered on January 10, 1969. On April 4, 1969, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to and including May 10, 1969. The jurisdiction of this Court is conferred by 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, under this Court's decision in *United States* v. *Union Central Life Ins. Co.*, 368 U.S. 291 (holding that the relevant State statute did not "authorize" the filing of appropriate federal tax lien notices in a State office), the government's tax lien was properly recorded in the district court under Section 3672 of the Internal Revenue Code of 1939, and thus was entitled to priority over the interest of a subsequent purchaser of real property.

STATUTES INVOLVED

Sections 3670, 3671, and 3672(a) of the Internal Revenue Code of 1939, and Act 104, Public Acts of Michigan of 1923 are set forth in Appendix C, *infra*, pp, 22–24.

STATEMENT

The controversy in this case involves conflicting claims to a parcel of land located in Livingston County, Michigan, by the United States, under a federal tax lien, and the respondents, who purchased the property in question from the delinquent taxpayer. The taxpayer, Thomas S. Donnelly, Sr., and his wife had acquired the property in 1949 as tenants by the entireties. In 1950 the Tax Court of the United States determined that Mr. Donnelly was liable for income taxes and penalties totaling approximately $26,000 for the years 1943–1945. Upon assessment of these liabilities, there was created a lien "in favor of the United States upon all property and rights to property, whether real or personal," belonging to the tax-

payer (Section 3670, Internal Revenue Code of 1939; see Section 6321, Internal Revenue Code of 1954).

Section 3672 of the 1939 Code provided that the government's tax lien would be valid against a subsequent purchaser of the taxpayer's property only if notice of the lien had been filed in a State office in which the filing of such notice was authorized by State law, or, if the filing in a State office was not so authorized, in the office of the Clerk of the United States District Court for the district in which the property was located (compare Section 6323, Internal Revenue Code of 1954).

At the time of the assessments against the taxpayer in this case, the Michigan statute purporting to authorize the filing of federal tax lien notices with the county registers of deeds required that the notice of a lien on real property contain "a description of the land upon which a lien is claimed" (Act 104, Public Acts of Michigan of 1923, Appendix C, *infra*, pp. 23–24). Because of this description requirement, which was found to be an impermissible obstacle to the enforcement of federal tax liens, this Court held in *United States* v. *Union Central Life Ins. Co.*, 368 U.S. 291, that the Michigan statute did not "authorize" a filing in a State office within the meaning of Section 3672.

The Treasury Department refused to acquiesce in the Michigan requirement that real property be described in the notice; its practice throughout the country was and is to use a form of notice which does not contain a description of any particular property sub-

ject to the lien.[1] In the present case, notice of the lien was therefore not filed in the office of the Register of Deeds of Livingston County, where the land is located. A standard notice of the lien was filed in November 1950, however, with the Clerk of the United States District Court for the Eastern District of Michigan and, with respect to the taxpayer's personal property, with the Register of Deeds of Wayne County, Michigan, where the taxpayer resided (R. 45a).[1a]

In August 1960, shortly after the taxpayer became sole owner of the Livingston County property upon the death of Mrs. Donnelly, he conveyed the property to respondents, Oscar A. and Genevieve S. Carlson, for the sum of $15,250 (R. 46a). The purchase was consummated after an abstract of title prepared by the Livingston County abstract office disclosed no notices of tax lien affecting real property owned by Mr. Donnelly. The abstract also was examined for respondents by a law firm which passed upon the marketability of their title in the property (R. 46a).

In 1961, the taxpayer executed a second statutory waiver, extending the time for collection of the tax liabilities to December 31, 1966. He died intestate on January 13, 1963, and a petition for the appointment of an administrator was filed by the government with

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[1] On September 10, 1953, subsequent to the filing in this case, the Attorney General of Michigan issued an opinion (No. 1709) holding that the form used by the United States Treasury for filing tax liens did not comply with the provisions of the Michigan statute, in that the form of the notice did not contain a description of the land upon which the lien was claimed. He therefore concluded that it was not entitled to recordation in the office of the register of deeds of any county of Michigan.

[1a] "R" references are to Appendix B to the government's brief in the court below.

the Wayne County Probate Court on December 30, 1966 (R. 46a–47a).

On the same day, the government instituted this action in the district court to foreclose its tax lien on the real property located in Livingston County (R. 47a). Respondents moved for summary judgment, contending that their title to the Livingston County property was entitled to priority over the government's tax lien because the government failed to file notice of the lien with the Register of Deeds in Livingston County pursuant to Michigan law (R. 18a–19a). The government—relying on this Court's holding in *United States* v. *Union Central Life Ins. Co., supra,* that the Michigan statute did not "authorize" a filing in a State office—argued that its notice of lien was properly filed in the federal district court, and therefore that its lien was entitled to priority over the subsequent title of respondents (R. 49a).

The district court, concluding that *Union Central* was distinguishable and, in all events, inapplicable in the circumstances of this case, granted respondents' motion for summary judgment (Appendix A, *infra,* p. 13). The court of appeals affirmed the judgment, by order, "for the reasons set forth in the opinion of [the district court]" (Appendix B, *infra,* p. 21).

REASONS FOR GRANTING THE WRIT

1. The decision below is squarely in conflict with the decision of this Court in *United States* v. *Union Central Life Ins. Co., supra,* which arose under the same federal and Michigan statutes involved in this case.

Union Central involved a notice of tax lien against delinquent Michigan taxpayers filed in a federal dis-

trict court in 1954. Several months later, the taxpayers executed a mortgage on certain real property, which was recorded in the office of the county register of deeds according to Michigan law. The mortgagee subsequently instituted a foreclosure action in a Michigan court, joining the government as a defendant and claiming that its mortgage was entitled to priority because notice of the tax lien had not been filed in the office of the register of deeds where the Michigan statute purported to authorize filing.[2] Consistent with its administrative practice, the government contended that the Michigan statute did not provide authorization for filing in a State office within the contemplation of Section 3672 because it required that the federal notice describe real property on which a lien was asserted. This Court reversed the State judgment that the federal lien was subordinate to the mortgage, holding (368 U.S. at 296):

> The Michigan law authorizing filing only if a description of the property was given placed obstacles to the enforcement of federal tax liens that Congress had not permitted, and consequently no state office was "authorized" for filing within the meaning of the federal statute. It was therefore error for the Michigan courts to fail to give priority to the Government's lien here, notice of which had been filed in the District Court in accordance with federal law.

The present case is identical with *Union Central* in all material respects. Here, as in that case, the same Michigan statute permitted the filing and recordation of a federal tax lien notice only on the condition that

[2] Act 104, Public Acts of Michigan of 1923.

it contain "a description of the land upon which a lien is claimed." Here again the government refused to comply with that condition and filed its notice in the federal district court under the alternative procedure specified by Section 3672(a)(2). The issue in both cases was whether filing in a State office was "authorized" within the meaning of the Internal Revenue Code;[3] in the absence of such authorization it is clear that the government did everything necessary to entitle its lien to priority.

Although it had been assumed that that issue was dispositively settled in *Union Central,* the district court in the present case found a path to a different result, and the court of appeals followed it.

The court first found that *Union Central* was distinguishable because in that case the government had attempted a State filing of its standard notice, which was rejected by the register of deeds, while there was no allegation in this case that a State filing was at-

[3] We agree with the district court's apparent conclusion that the provisions of the 1939 Code apply in this case. The validity of the government's filing in 1950, of course, was governed by the 1939 Code, and in the absence of any statutory limitations period on the effectiveness of the filing (compare Section 6323(g)(3) of the 1954 Code, 26 U.S.C. (Supp. III) 6323(g)(3)), the lien remained in effect according to the filing at the time respondents purchased the property and at the time the government instituted this action. Even if it is assumed that the cognate provision of the 1954 Code (Section 6323(f) (Supp. III), 26 U.S.C. 6323(f)) was intended to make a substantive change in the law—of which we can find no evidence and which respondents apparently do not contend—there is nothing to indicate that the enactment of the 1954 Code was intended to require the government to reexamine all its prior filings and, where necessary, refile the notices in accordance with the new law.

tempted and rejected (App. A, *infra*, p. 18). Both the factual and legal premises of this asserted distinction, however, are erroneous. Although the parties stipulated in *Union Central* that it was the policy of the register of deeds not to accept a lien notice which did not describe real property (see 368 U.S. at 293), we can find nothing in this Court's opinion or in the briefs and record of the case which indicates that an unsuccessful State filing was actually attempted. In any event, an unsuccessful attempt plainly would not have afforded any more effective notice of the lien to the mortgagee there or the purchasers here.

The district court's reliance on the failure to attempt a State filing may rest upon a supposition that the county register of deeds might have *accepted* and recorded a notice if tendered. That possibility is legally irrelevant, however, for, in this posture, the district court's decision purports to overrule *Union Central* rather than distinguish it. Since the Michigan statute—as assessed in *Union Central*—did not "authorize" the filing of notices in a State office, it follows under Section 3672 that the federal court filing satisfied the perfection requirement; Section 3672 requires the government to file either in a State office or in a federal district court, but not in both. It is plainly inconsistent with *Union Central* to refuse to give effect to a properly recorded lien merely because the government failed to take some step which it did not have to take and which was not authorized by the State law.

The district court alternatively held that *Union Central* was inapplicable in the circumstances of this

case because respondents had pu
prior to the decision in *Union C*
there was "every indication" th
ute would be upheld as a valid a
federal tax lien notices (App. A,
though the court did not emplo
it ruled, in effect, that the hold,
was to be applied only to cases
ing interest in the property ar
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Central opinion, however, whic
gests that the Court contempla
the general principle that its au
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in all cases arising under the st
conceptual difficulties inherent i
ity of a lien notice is determine
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recognition in *Union Central*
consistent refusal to conform
quirements refutes the ration
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urchased the property
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infra, pp. 18–20). Al-
y these precise terms,
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in which the compet-
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nothing in the *Union*
h even remotely sug-
ated a departure from
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tatute.[4] Aside from the
n a rule that the valid-
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roperty, this Court's
of the government's
to the Michigan re-
nale that respondents
neous rule which had
Circuit before *Union*

[4] See, *e.g.*, *Geiger's Estate* v. *Com*
(C.A. 8*c*), certiorari denied, 382 U.S
Siano, 356 F. 2d 927 (C.A. 2); and
41 T.C. 338, all of which held that *Ja*
U.S. 213 (holding that embezzled f
income to the embezzler) applied to f
prior to the *James* decision.

missioner, 352 F. 2d 221
S. 1012; *United States* v.
d *Nerem* v. *Commissioner*,
ames v. *United States*, 366
funds constituted taxable
funds that were embezzled

Central (see 368 U.S. at 293, 295–296).[5] Indeed, it would place a premium on disorderliness in the administration of federal law if the government were to be penalized, as the district court in effect ruled, for adhering to a position which ultimately was confirmed by this Court.[6]

[5] Moreover, the necessity for Michigan title searchers and lawyers to check the lien indexes in the federal courts, in view of the government's response to the Michigan statute, was well recognized several years before respondents purchased the property in this case. Wright, *Title Examinations in Michigan as Affected by the General Federal Tax Lien*, 51 Mich. L. Rev. 183, 192–198 (1952).

[6] In view of the grounds on which the decision below was based, neither the district court nor the court of appeals found it necessary to reach respondents' additional contentions that the tax lien was defective because (1) the government failed to file notice in the State office after 1956, when the legislature enacted a new filing statute that repealed the invalid requirement for description of real property, and (2) the government failed to file notice of its lien (in the State office) in 1960 upon the death of Mrs. Donnelly when, respondents argued, the property first became subject to the lien. The first contention concedes that the lien was properly filed in the district court in 1950, but assumes that the government has a continuing duty to respond to any change in State law by refiling in a newly-authorized State office all notices which had properly been filed in the district court. In *In re Dartmont Coal Co.*, 46 F. 2d 455 (C.A. 4), the court persuasively reasoned that Congress had not intended to impose such an unusual administrative burden on the government to preserve the effectiveness of its liens. Assuming *arguendo* that the government could not foreclose on the lien until the taxpayer became sole owner of the property at his wife's death, respondents' second contention is completely inconsistent with this Court's decision in *Glass City Bank* v. *United States*, 326 U.S. 265, that the government's tax lien attaches not only to property which the taxpayer owns at the time notice of the lien is filed but also to property subsequently acquired by the taxpayer during the life of the lien. It would

2. The decision below presents a significant administrative problem for the Internal Revenue Service. The rationale adopted by the district court is applicable not only to notices of liens filed in the federal district court in Michigan prior to August 11, 1956 (the effective date of the repeal of the Michigan statute, see 368 U.S. at 292–293) but also to federally filed notices in several other States. The Internal Revenue Service advises that the adoption of the 1962 version of the Uniform Federal Tax Lien Registration Act in Pennsylvania, Massachusetts, and Wisconsin[7] resulted in federal court filings in those States that might be invalidated under the district court's reasoning, which presumably would be applicable to the 1954 Code as well as the 1939 Code; notices filed in Illinois between 1966 and 1967 also may be affected. In sum, the validity of approximately 40,000 notices filed in the district courts in five States has been clouded by the decision in the instant case, with resulting uncertainty of land titles for the public as well as injury to the government.

CONCLUSION

Because the court of appeals has decided this important federal question in a way in direct conflict

be extraordinarily difficult for the government to monitor the affairs of every delinquent taxpayer and file successive notices of lien every time a taxpayer acquired a significant piece of property on which the government might be required to execute in order to liquidate the taxpayer's liability.

[7] The 1962 Lien Act is still in effect in Massachusetts and was in effect for two years in both Pennsylvania and Wisconsin.

with a prior decision of this Court, the petition for a writ of certiorari should be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solictor General.
JOHNNIE M. WALTERS,
Assistant Attorney General.
JOSEPH J. CONNOLLY,
Assistant to the Solicitor General.
CROMBIE J. D. GARRETT,
KARL SCHMEIDLER,
Attorneys.

MAY 1969.

APPENDIX A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

Civil No. 29428

UNITED STATES OF AMERICA, PLAINTIFF

v.

ESTATE OF THOMAS S. DONNELLY, SR., OSCAR A. CARLSON, AND GENEVIEVE S. CARLSON, DEFENDANTS

OPINION AND ORDER

(Filed October 6, 1967)

Appearances:

Mr. Lawrence Gubow, United States Attorney, Attn. Joseph F. Deeb, Jr., 811 Federal Building, Detroit, Michigan 48226.

Daniel N. Pevos, Pevos & Pevos, 1041 Penobscot Building, Detroit, Michigan 48226.

Facts:

This is a suit in equity filed under Sections 7401 and 7403 of the Internal Revenue Code of 1954. The bill of complaint seeks to foreclose certain real property located in Livingston County, Michigan, arising out of a deficiency assessment of income tax against Thomas S. Donnelly, Sr., and to give priority over the rights of defendants Oscar A. Carlson and Genevieve S. Carlson, who are subsequent purchasers of the property in good faith and for value.

The facts are not in dispute and are as follows:

On April 16, 1949, Thomas S. Donnelly, Sr. and Jessie C. Donnelly, his wife, acquired by warranty deed certain property located in Livingston County, Michigan. Said deed was properly recorded in Livingston County. On June 23, 1950, the Tax Court of the United States determined that Thomas S. Donnelly, Sr., individually, was liable for income taxes and penalties for the years 1943, 1944, 1945, in the amount of about $26,000.00. Assessments of the taxes were made and notice of the tax liens was filed with the *Wayne* County Register of Deeds on November 28, 1950. On November 29, 1950 a notice of tax liens was also filed by Internal Revenue Service with the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan.

On February 14, 1956, Donnelly executed a statutory waiver extending the time of collection of the tax liabilities for a period of five years.

August 11, 1956, the Uniform Federal Tax Lien Registration Act became effective in Michigan.[1] Subsequently a "Certificate of Non-attachment of Federal Tax Lien", referring to separate property of Donnelly located in Detroit, Michigan, was filed in September, 1956, and was attached to those notices previously filed with Wayne County Register of Deeds and Clerk of United States District Court in 1950. Jessie C. Donnelly, wife of the taxpayer, died on May 28, 1960

[1] The "Uniform Federal Tax Lien Registration Act" [Act 107, P. A. 1956 effective August 11, 1956; C.L. 1948, § 211.661 et seq.] repealed the Act 104 of Public Acts of 1923. The Act eliminated the requirement of a description of property and was in effect for almost six years prior to the purchase by defendants Carlson. It was not until after the purchase by defendants that notice of any lien was filed with the Register of Deeds for Livingston County pursuant to Act 107.

and her death was recorded with the Livingston County Register of Deeds. On August 6, 1960, after negotiation through a real estate broker in Brighton, Michigan, defendants Oscar A. Carlson and Genevieve S. Carlson purchased the property situated in Livingston County by warranty deed. The defendants Carlson paid $15,250.00 for the property.[2] The purchase was consummated after an abstract of title was prepared by the Livingston County abstract office, Howell, Michigan, disclosing no notices of tax lien affecting real property owned by Donnelly. The abstract was examined for defendants Carlson by a law firm who passed upon the marketability of defendants' title in the property, in accordance with a written opinion dated July 22, 1960.

On March 20, 1961, the Internal Revenue Service filed a notice of tax liens with the Register of Deeds of Livingston County, in accordance with Act 107 of Public Acts of 1956, and on April 17, 1961, a second statutory waiver extending the time for payment to December 31, 1966, was signed by Donnelly.

Donnelly died intestate on January 13, 1963, and a petition for appointment of administrator was filed by plaintiff with the Wayne County Probate Court (No. 564-956) on December 30, 1966.[3]

---

[2] Since the purchase by Carlson and prior to the commencement of suit, the defendants have expended over $25,000 on improvements to the property.

[3] The Probate Code provides that "if the widow, husband, or next of kin or grantee shall neglect for 30 days after the death of the intestate to apply for administration, or to request that administration be granted to some other person, one or more of the principal creditors may file such petition, or the same may be filed by any person in whose favor a right or cause of action exists which cannot be enforced without such administration or by the public administrator of the proper county." C. L. 1948, § 702.51.

Suit to foreclose the tax lien was commenced by the filing of a complaint with this court on December 30, 1966, with service being made upon the defendants Carlson on May 4, 1967.

The defendants Carlson move for summary judgment in their favor, urging upon the court the failure of the government to comply with the Michigan statute regarding notice of tax liens, thus entitling them to the protection afforded bona fide purchasers in good faith without notice.

The position of the government is that notice was given constructively to the defendants by the Internal Revenue Service and such right to foreclose may not be lost through laches.

Opinion

Rule 56 of Federal Rules of Civil Procedure provides for this court to grant a summary judgment where there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law.

The controlling issue is whether a tax lien of the United States is valid as against a subsequent purchaser of real estate, who takes title without actual knowledge of an existing lien and where the notice of the lien is filed only with the Clerk of this court and not with the Register of Deeds in the county where the property is located.

Under the provisions of Section 3672 of the Internal Revenue Code of 1939, it is provided that such liens shall not be valid as against any purchaser until notice thereof has been filed in accordance with the law of the state in which the property subject to the lien is

situated, whenever the state has by law provided for the filing of such notice.[4]

By Act 104 of the Public Acts of the State of Michigan for the year 1923 (C.L. 1948, § 211.521 et seq.), the State of Michigan provided for the filing of notices of federal tax liens in the office of the Register of Deeds, pursuant to Section 3672 of the Internal Revenue Code of 1939, and thereby provided that the notice of lien should set forth, among other things, a description of the land upon which a lien is claimed.

The purpose of filing notice is to avoid the harsh effect of enforcing a secret tax lien upon innocent purchaser. *U.S. v. Gilbert Associates, Inc.*, 345 U.S. 361 (1953); *U.S. v. Hodes*, 355 F. 2d 746 (1966), cert. granted, 384 U.S. 968. That the defendants were bona fide purchasers who acted in good faith and for value is not disputed. Whether they had notice or should have had notice is disputed.

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[4] "§ 3672. Validity against mortgagees, pledgees, purchasers, and judgment creditors.

(a) *Invalidity of lien without notice.* Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector;

(1) *Under State or Territorial laws.* In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With clerk of district court.* In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) *With clerk of District Court of the United States for the District of Columbia.* In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia."

The government asks this court to adhere to their reasoning that they complied with the notice provisions as set forth in § 3672 by the filing with the Clerk of this court. They contend that since *U.S. v. Union Central Life Ins. Co.*, 368 U.S. 291 (1961), such state law had never existed and, therefore, they complied with § 3672 of the Code. Their position, apparently sound on its face, is faulty for two reasons.

First, the *Union Central* facts are clearly distinguished from this case in that an attempt had been made in the *Union Central* case to file notice with the Register of Deeds in 1954, which had been refused by the Register of Deeds pursuant to a Michigan Attorney General opinion rendered in 1953, which ruled that federal tax lien notices not containing a description of the property are not entitled to be recorded. In the instant case, there had been no attempt to file with the Register of Deeds. There is no indication that the Register would refuse in 1950, in light of the fact that the Register of Deeds for Wayne County accepted notice and the opinion of the Attorney General for Michigan was not rendered until three years later.

Second, this court views the acts of the parties in relation to the laws in existence at that time. Thus, we have a Michigan statute requiring notice of any federal tax lien to be filed, with a description of the property, in the county where the property is located. This same statute was later declared not to be the law by the Supreme Court of the United States. However, even where a statute is unconstitutional and hence declared void as of the beginning, the Supreme Court has held that its existence before it has been so declared is not to be ignored. *NLRB* v. *Rockaway News Supply Co.*, 345 U.S. 71 (1953). This court thinks that the principle stated by Chief Justice

Hughes for a unanimous court in *Chicot County Drainage District* v. *Baxter State Bank,* 308 U.S. 371 (1939), is applicable to this case.

> "The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. *Norton v. Shelby County,* 118 U.S. 425, 442; *Chicago, I. & L. Ry. Co. v. Hackett,* 228 U.S. 559, 566. It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects,—with respect to particular relations, individual and corporate, and particular conduct, private and official.
>
> "Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination." (308 U.S. 374.)

An examination of the facts will disclose that the Michigan statute had been approved by this court and the Court of Appeals. See *U.S.* v. *Maniaci,* 36 F. Supp. 293 (1933) and *Youngblood* v. *U.S.,* 141 F. 2d 912 (1944). And yet in 1950, when notice, with a description, was to be filed in Livingston County, the government failed to comply. Reasons for not filing the notice were not given, except to say that in the *Union Central* case the Supreme Court held that no such state law could exist. That decision, however, had not been rendered until 1961, some 16 months after the pur-

chase by the defendants. Prior to that decision, there was no indication that such statute would be declared per se illegal. On the contrary, every indication was that the statute would be upheld.

Thus, in the light of the foregoing facts and reasons, this court cannot but hold that the Carlsons were bona fide purchasers in good faith without notice.

This Court does agree with the government on the question of laches, that such right may not be lost through laches. *U.S.* v. *Mr. Hamburg Bronx Corp.*, 228 F. Supp. 115 (1964); *U.S.* v. *Summerlin*, 310 U.S. 414 (1940). And the United States may proceed to recover back taxes from the Estate of Donnelly.

Therefore, it is ordered summary judgment in favor of the defendants Carlson should be and hereby is granted. Plaintiff, United States, has no interest, lien, or claim in the property described in the complaint.

FRED W. KAESS,
United States District Judge.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 18432

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT,

v.

ESTATE OF THOMAS S. DONNELLY, SR., OSCAR A. CARLSON AND GENEVIEVE S. CARLSON, DEFENDANTS-APPELLEES.

Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division.

ORDER

Before: CELEBREZZE and COMBS, Circuit Judges, and MCALLISTER, Senior Circuit Judge.

The above cause coming on to be heard upon the briefs and record, and the arguments of the parties in open court, and the Court being duly advised,

Now, therefore, it is hereby Ordered, Adjudged and Decreed that the judgment of the District Court be and is hereby affirmed for the reasons set forth in the opinion of Judge Kaess.

Entered by Order of the Court.

CARL W. REUSS, *Clerk.*

APPENDIX C

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

[26 U.S.C. (1952 ed.) 3670.]

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

[26 U.S.C. (1952 ed.) 3671.]

Sec. 3672 [as amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 882, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 957] VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under state or territorial laws*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With clerk of district court*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

* * * * *

[26 U.S.C. (1952 ed.) 3672.]

Michigan Public Acts, 1923, No. 104, as amended by Michigan Public Acts, 1925, No. 13:

An Act to provide for and to authorize the filing of notices of federal tax liens by the United States of America in the office of the register of deeds in the various counties of this state, pursuant to section three thousand one hundred eighty-six of the revised statutes of the United States.

The People of the State of Michigan enact:

Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the

United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty cents for such notice, file and index the same in a separate book, entitled "Record of the United States Tax Liens", indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred and eighty-six of the revised statutes of the United States.

U.S. GOVERNMENT PRINTING OFFICE: 1969